IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NOs : 5939 and 14230 of 2004

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WRIT PETITION NO : 5939 of 2004

Between:

1 Mohd.Ibrahim Khaleel, s/o late Mohd.Abdul Khader,
Occ:Retired Govt.Employee, r/o H.No.8-2-686/1/39, N.B.T.Nagar,
Road No.1, Banjara Hills, Hyderabad.
2 Mohd.Asfaq, s/o Mohd.Khaja,
Occ:business, r/o H.No.18-2-39/1, Chandrayangutta, Hyderabad.

..... PETITIONERs

AND

1 The Mandal Revenue Officer, Shaikpet Mandal, having office at Banjara Hills,Hyderabad.
2 Joint Director Pension Payment Office, M.J. Road, Hyderabad.
(R2 is impleaded as per Court Order Dated 13-04-2004 in W.P.M.P. 9294 of 2004.

.....RESPONDENTs

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass an order, direction or a writ, particularly in the nature of writ of mandamus declaring that the impugned notice of the respondent vide noticeNo.2620 of 2003 dated 11-7-2003 is illegal, arbitrary and in violation of principles of natural justice and the same may be set aside and pass any other order or orders as deemed fit and proper in the circumstances of the case in the interest of justice

For the Petitioner: MR.MOHD.MOIN AHMED QUADRI, Advocate

For the Respondents: GP FOR REVENUE

The Court made the following :

WRIT PETITION NO : 14230 of 2004

Between:

Mohd. Asfaq, S/o. Mohd. Khaja
H.No. 18-2-39/29/1, Chandrayangutta, Hyd.

..... PETITIONER

AND

The Mandal Revenue Officer, Bandlaguda, Near Falakunuma Palace, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the respondent and issue an appropriate Writ, Order or Direction, particularly one in the nature of Writ of Mandamus, declaring that the impugned Notice issued by the respondent in proceedings No.B/735/2004, dt. 5.8.2004 as illegal, unjust, contrary to law, arbitrary, in violation of principles of natural justice and without jurisdiction, and grant all consequential benefits.

For the Petitioner: MR.A.K.JAYAPRAKASH RAO, Advocate

For the Respondent: GP FOR REVENUE

The Court made the following :

COMMON ORDER:

The point that fell for consideration in both the writ petitions is common. Hence it is expedient to dispose of the same by this common order.

The 1st petitioner in W.P.No.5939 of 2004 who is a retired employee and the petitioner in W.P.No.14230 of 2004 who is a businessman filed the present writ petitions questioning the notices dated 11-07-2003 and 05-08-2004 issued under

the provisions of A.P. Revenue Recovery Act, 1864 (for short 'the Act') for recovery of the amount of Rs.20.54 lakhs from the petitioners which is said to have been misappropriated by drawing pension amounts fraudulently from the pension payment office for which a crime was registered with Banjara Hills Police Station in Cr.No.653 of 2001.

The counter filed by he M.R.O. who issued the impugned notice discloses that the said notice was issued under the Act pursuant to a direction issued by the District Collector in the light of request made by the Joint Director, Pension Payment Office.

In view of the same, the Joint Director, Pension Payment Office was impeladed as party respondent to the writ petition in W.P.No.5939 of 2004 and filed a counter stating that on registering a crime by the Banjara Hills Police Station petitioners were interrogated before the Panchas which reveals that if any illiterate pensioner used to open the bank account, they opened with the same name and address by affixing the photographs of bogus persons and pension used to credit to the said account and withdrawn with the help of forged passbooks and the said amounts were shared by the petitioners. In view of the same, 2nd respondent addressed the District Collector and Magistrate for taking action under the Act by confiscating the properties and to seize the bank accounts of the petitioners. Basing upon the said request, the District Collector instructed Bandlaguda and Shaikpet MROs, for immediate realization of the amounts from the defaulters under the Act, which resulted in issuing the impugned notices.

Learned Counsel for the petitioners contends that before fastening the liability on the petitioners no notice whatsoever was issued to them and straightaway the authorities cannot attach the properties.

Learned Government Pleader for Revenue has not made available the said record to show that necessary enquiry was conducted before recovery of the amounts due under the Act and in fact no amount was ascertained by the respondents, which is a sin quo non for proceeding under the Act.

It is well settled that any statement recorded by the police during the course of investigation cannot be used against the accused, particularly for recovery of the amounts unless the case falls under Section 37 of the Indian Evidence Act.

In view of the same, proceedings issued under the Act cannot be sustainable and

the same are accordingly set aside. The properties, if any, attached pursuant to the impugned notices shall be continued in attachment until the amounts misappropriated by the petitioners are determined. The 2nd respondent is at liberty to issue notice to the petitioners intimating the amounts misappropriated by them, and after giving opportunity can pass appropriate orders holding them liable for the same. On fixing the liability it is always open for the respondents to proceed against the petitioners under the Act.

The writ petitions are accordingly allowed. No costs.

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A.GOPAL REDDY,J

18-08-2004

Murthy/kmr

1 The Mandal Revenue Officer, Shaikpet Mandal, having office at Banjara Hills,Hyderabad.
2 Joint Director Pension Payment Office, M.J. Road, Hyderabad.
3. The Mandal Revenue Officer, Bandlaguda, Near Falakunuma Palace, Hyderabad.

4. Two CCs to the Govt., Pleader for Revenue, High Court Buildings, Hyderabad.

(OUT)

5. 2 CD copies.